in order to reach a conclusion that he might have thought was just and proper. It was held by Scrutton L.J. in the case of *Blay* v. *Pollard & Morris*:[1]

"Cases must be decided on the issues on record; and if it is desired to raise other issues they must be placed on the record by amendment. In the present case the issue on which the judge decided was raised by himself without amending the pleadings and in my opinion he was not entitled to take such a course."

This case was followed in our own Court of Appeal in *Haji Mohamed Dom* v. *Sakiman*[2] where Sir Charles Mathew C.J. said:

"I think it is clear that a Judge is bound to decide a case on the issues on the record and that if there are other questions they must be placed on the record."

A judgment should be based upon the issues which arise in the suit and if such a judgment does not dispose of the questions as presented by the parties it renders itself liable not only to grave criticism but also to a miscarriage of justice. It becomes worse and is unsustainable if it goes outside the issues. Such a judgment cannot be said to be in accordance with the law and the rules of procedure. It is the duty of the courts to follow the rules of procedure and practice to ensure that justice is done. These rules are meant to be observed and respected. The faith and the confidence of the public in the law, the Constitution and the Government depends to a fairly large extent on the way the machinery of justice functions and it is the duty of those who man that machinery to realise that what they do does not in any way tend to diminish that faith. Everyone is, no doubt, liable to make mistakes but it would have been better if the learned magistrate had acted in less haste and had taken a little time to look up the law on the matter.

The order of the learned magistrate is set aside and the case is sent back to be tried by another magistrate with the direction that he should hear and decide the case on the issues raised in the pleadings. The case will be mentioned before the president of the sessions court on 13th June 1971.

Order of magistrate set aside. New trial ordered.

HAJI HASSAN & ORS. v. TEO SOON YEN & ANOR.

[O.C.J. (Sharma J.) April 24, 1971]

[Malacca — Civil Suits Nos. 8, 9 & 10 of 1962]

Practice and Procedure — Defence — Leave to amend — Application for — Delay — Circumstances contributing — R.S.C. 1957, O. 54 r. 22A.

This was an application for leave to amend the defence of the second defendant. There were 3 suits and the plaintiffs in each suit filed a writ on February 17, 1962 claiming damages from the defendants. The second defendant filed his defence on May 8, 1962 and the first defendant filed his defence on May 30, 1962. In paragraph 9 of his defence, the first defendant claimed to be indemnified by the second defendant against any judgment which the plaintiffs might obtain in these suits. The plaintiffs obtained judgment against both the defendants on March 26, 1971. The proposed amendments introduced for the first time allegations of fraud practised by the first defendant. It also alleged what amounted to commission of an offence by the first defendant. The application originally came up before the judge in chambers on April 3, 1971, and was dismissed. Subsequently, the matter was brought into open court under R.S.C. 1957, 0. 54, r. 22A for further arguments.

Held: in the circumstances of this case, the delay in making the application was due to the fact that the question was not going to arise until after the liability of both the defendants to the plaintiffs' claim for damages was established; and as this particular issue could not have been finally decided until March 26, 1971, the second defendant could not realise earlier that the amendment was necessary. Thus, the delay in the application was not due to the fault of the second defendant alone. The amendment should be allowed subject to the payment of costs.

Case referred to:-

(1) *Riding* v. *Hawkins* (1889) 14 P.D. 56.

CIVIL SUIT.

Dato' Balwant Singh for the applicant/2nd defendant.

W.H. Sault for the respondent/1st defendant.

Sharma J. (delivering oral ruling): This is an application for grant of leave to amend the defence of the second defendant. The application had originally come up before me in chambers on 3rd April 1971 when I dismissed it. The matter is now before me in open court under O. 54 r. 22A of the Rules of the Supreme Court for further arguments. The facts of the case briefly are that the plaintiffs in these three suits filed a writ on 17th February 1962 claiming damages from the defendants. The second defendant filed his defence on 8th day of May 1962 and the first defendant filed his defence on the 30th day of May 1962. In paragraph 9 of the first defendant's defence he claimed to be indemnified by the second defendant against any judgment which the plaintiffs might obtain in these suits. When these three suits came up for hearing it was agreed that the question of the second defendant's liability to indemnify the first defendant should not be gone into until the plaintiffs' claim against the two defendants was heard and finally determined. The plaintiffs obtained judgment against both the defendants on 26th March 1971. It was thus only after that that the question of the liability, if any, of the second defendant to indemnify the first defendant could be considered. The proposed amendments do for the first time introduce allegations of fraud practised by the first defendant. The proposed amendments not only introduce an element of fraud but also allege what amounts to commission of an offence by the first defendant. Various authorities have been cited before me by the learned counsel for the second defendant. It is well established that leave to amend should generally be granted unless the application is not *bona fide* or is such that it is likely to result in some injury to the other side which injury cannot be compensated for by costs. It is also a well recognised principle that the court does not readily allow an amendment the necessity for which should have been abundantly apparent long ago. Further, an amendment is generally not allowed which for the first time introduces a charge of fraud. I need not go into the various authorities which establish those well-

known principles governing the question of the exercise of the court's discretion in allowing or refusing to allow the amendments sought.

The issue between the two defendants has yet to be tried and the application for amendment has for all practical purposes to be treated as if it was an application made during the trial. In the words of O. 28 r. 1 "all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties." It is true that the second defendant could and should have made an application to amend his defence once the first defendant had pleaded that he was claiming an indemnity against the second defendant but as it so happened the second defendant had already filed his defence before this assertion was made by the first defendant and the question of the determination of the second defendant's liability to the first defendant was thus left in abeyance until 26th March 1971.

There have been cases in which amendments alleging fraud have been allowed even at the hearing of a suit. Such cases are exceptional though. *Riding* v. *Hawkins*[1] was a case in point. There were special circumstances in that case. It might perhaps have been better, as was suggested by me when the matter came up in chambers, that the second defendant file a suit for cancellation of the agreement and then make an application for stay of proceedings of the present suits. That course has not been followed because it is suggested that it would lead only to a multiplicity of proceedings. I need not express any views on that The function of the courts is to do justice between the parties and in this particular case I find that correspondence had in fact passed between the parties as early as 1961 which suggested exactly what the second defendant now wishes to plead by amendment of his defence. There has undoubtedly been a great delay on the part of the second defendant to come to court to make the present application but that delay, it appears to me, is attributable to a somewhat false sense of security into which the second defendant had lulled himself by the fact that the question was not going to arise until after the liability of both the defendants to the plaintiffs' claim for damages was established and as this particular issue could not be finally decided until the 26th March this year, the second defendant could not realise earlier that the amendment was necessary. I am in the circumstances inclined to allow the amendment. The delay has not been due to the fault of the second defendant alone. The amendment will be allowed but only subject to the payment of costs and I like to hear counsel on that question.

Application to amend the defence of the second defendant granted.

Solicitors: *Dato' Balwant Singh & Co., W. H. Sault.*

GOH CHIN HOCK v. SHAW & SHAW LTD.

[O.C.J. (Syed Agil Barakbah J.) June 12, 1971]

[Alor Star — Civil Apeal No. 6 of 1970]

Landlord and Tenant — Recovery of possession — Relevant matters for consideration — "Reasonable to make order" — What matters to be considered — Control of Rent Act, 1966, s. 16(1)(k).

Practice and Procedure — Costs under Control of Rent Act 1966, s. 16(6) — Discretion of court.

The respondents were owners of a piece of land. The appellant was the tenant of a portion of the said land paying a ground rent of $15 per month and had erected a temporary structure on it. Subsequently the tenant enlarged and extended this structure to cover the entire portion of the land occupied by him without permission and approval of the landlord and the local authority. On account of illegal erections the respondents sued under section 16(1)(k) of the Control of Rent Act and obtained judgment for posession against which the tenant appealed.

Held: there are two requirements to be considered in construing section 16(1)(k) of the Control of Rent Act, 1966: (i) that the tenant or any person occupying the controlled premises under him has exposed the landlord to a penalty, fine or forfeiture by committing a breach of any law relating to local authorities; and (ii) the court considers that an order or judgment for possession against the tenant should be made or given; in this case as the second limb of section 16(1)(k) was not adequately considered by the sessions court and the court was silent in regard to its effect on subtenants, a retrial was ordered.

Cases referred to:-

(1) *Ho Tong Cheong & Ors.* v. *Oversea Chinese Banking Corporation Ltd.* [1969] 1 M.L.J. 129.

(2) *Yeong Peng Wah* v. *Bahal Singh* [1961] M.L.J. 316. 317.

(3) *Attorney-General* v. *Sillem* (1863) 159 E.R. 217.

(4) *Chiverton* v. *Ede* [1921] 2 K.B. 30, 44, 45, D.C.

(5) *In re Taylor* (1876) 4 Ch. D. 157, 159.

(6) *Cumming* v. *Danson* (1942) 112 L.J.K.B. 145, 147.

(7) *Kemp* v. *Ballachulish Estate Co. Ltd.* [1933] S.C. 478.

(8) *The Perak Hauliers Ltd.* v. *The Cycle & Carriage Co. Ltd.* [1962] M.L.J. 7, 13.

CIVIL APPEAL.

Karpal Singh for the appellant.

O.L. Phipps for the respondents.

Cur. Adv. Vult.

Syed Agil Barakbah J.: This is an appeal against the decision of the learned president of the sessions court at Alor Star, given on 8th December, 1969, in favour of the respondents (plaintiffs) under section 16(1)(k) of the Control of Rent Act, 1966. The order against the appellant (defendant) was to surrender possession of land comprised of Portion No. 1348 in Grant No. 23978, in the Mukim of Kota Star, situated at Jalan Raja in Alor Star town. The appellant was also ordered to demolish the temporary building situated in the said land within a period of three months and to pay the costs of the action.

The facts relevant to this appeal as accepted by the trial president are that the respondents are the owners of the land on which stands the Royal Theatre. The appellant is the tenant of a portion of the said land to the rear of the theatre paying ground rent of